IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 34935 of 2004(H)

AGAINST THE ORDER DATED 22/9/04 IN EP 105/2004 IN OS.201/2000 of MUNSIFF'S COURT, QUILANDY

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PETITIONER:

KUNNIKKOTTATHIL SUKUMARAN,
AVIDANALLUR AMSOM, POONATH DESOM,
KOYILANDI, KOZHIKODE DISTRICT.

BY ADV. SRI.B.V.JOY SANKER

RESPONDENT:

KATUMBODI BALAN NAIR,
THRIKKUTISSERY AMSOM, VAKAYAD DESOM,
KOYILANDI, KOZHIKODE.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY
SRI.N.M.RAJAGOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.34935/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER IN EP.105/04 IN O.S.201/2000 OF MUNSIFF'S COURT, KOYILANDI DT.22.9.04.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.34935 OF 2004

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DATED THIS THE 20th JULY, 2007

J U D G M E N T

Heard both sides.

2. Under the impugned order Ext.P1, the learned Munsiff has turned down the contention of the petitioner-judgment-debtor that the property in question is not liable to be sold in view of Section 60(1)(c) of the Code of Civil Procedure. I notice that the decree had provided a charge over the property. I had occasion to hold in many cases that Section 60(1)(c) can deal only with attachments or sales pursuant to attachments. In the instant case, since the decree provides a charge over the property, the question of attachment does not arise. The view of the learned Munsiff in that regard is only to be upheld.

2. The learned counsel for the petitioner Mr.B.V.Joy Sankar requested that instalment facility be granted to the petitioner by way of indulgence. Mr.R.Parthasarathy, counsel for the respondent opposes the request. He submitted that a substantial amount of Rs.25,000/- was given up by the petitioner under the compromise itself.

3. Considering the rival submissions addressed at the Bar, even as I confirm Ext.P1, I am inclined to grant instalment facility to the

petitioner. The petitioner is directed to pay the decree-debt in monthly instalments of Rs.6000/- commencing from 16.8.2007. In the event of any default, the petitioner will forfeit the above benefit and thereupon it will be open to the execution court to sell the property and facilitate recovery of the amount by the respondent in a lump. The order of stay now passed in respect of Ext.P1 will continue only subject to the above direction.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

tgl